thus stated, it may be argued, as the appellant is now arguing, that as the front portion became reasonably fit for occupation after January 31, 1948 it is outside the scope of the Act. The fallacy in the argument is that it overlooks the true meaning of the word "premises" as defined in the Act. In the case of a premises which has been let as a whole, as here, it is impossible to regard the front portion as being separate from the rest of the premises. It may be that the front portion now looks different in appearance, size or dimension, but the fact remains that it is still part of the controlled premises and would remain so unless there is anything in the Act which says otherwise. Before the fire and after the repairs and alterations to the front portion were completed the tenant remained in occupation and presumably paying the same rent as before. In other words, he was holding on to his tenancy regardless of what had happened. The fact that the appellant has terminated the tenancy by notice was in itself an admission that the contractual relationship of landlord and tenant in respect of the premises as a whole remained in existence even after the repairs and alterations to the front portion were completed. In my respectful opinion, the view as expressed by Raja Azlan Shah J. in *Pritam Kaur's* case, *supra*, and extended to the instant case cannot, on the facts, be sustained. Whether it can be, if the facts had been the same as in the *Eastern Realty Co. Ltd.'s* case, *supra*, or in the case of *Success Enterprises Ltd.* v. *Eng Ah Boon*[3] is, I think, a question which will be considered when it arises. Therefore, although I agree with the conclusion in this case, I do not agree with the reasons for the conclusion.

Accordingly, this appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *K. K. Lam & Co.; R. R. Chelliah Bros.*

MAHAMAD BIN MAHAMAD SAID & ANOR. v. PERIANAYAGAM & ANOR.

[F.C. (Suffian, Ali and Ong Hock Sim F.JJ.) October 19, 1971]

[Kuala Lumpur — Federal Court Civil Appeal No. 57 of 1971]

Damages — Quantum — Personal injuries — Reduction of sum awarded as being out of line with trend in reasonably comparable cases.

Practice and Procedure — Appeal — Competence of appellate court to interfere with quantum of damages awarded in the court below.

The appellants/defendants appealed against the quantum of damages awarded in favour of the respondent/plaintiff who suffered injuries in a road accident. The learned trial judge held the first defendant/respondent 2/3 to blame and the plaintiff/appellant 1/3 to blame for the accident. There was no appeal against this finding.

The learned judge awarded $9,000 for general damages and $250 for special damages. He took into account the facts of the case and the principle that general damages should be in line with a discernible upward trend of damages in reasonably comparable cases. He awarded $3,000 for the fracture of the plaintiff's ankle bone and $6,000 for the pain and suffering and loss of amenities for the fracture of the hip joint, his permanent disabilities and osteo-arthritis and the longer years of the plaintiff's suffering.

Held, allowing the appeal: (1) the award of general damages in this case was so out of line with the trend in reasonably comparable cases that it was competent for the Federal Court to interfere with it;

(2) the learned judge should not have taken compensation for each of the two injuries suffered by the respondent separately and added them up at the end. The items are not separate heads of compensation. They are only aids at arriving at a fair and reasonable compensation. There is an element of overlapping when two or more injuries are suffered simultaneously;

(3) accordingly, therefore, the quantum of general damages was reduced from $9,000 to $6,000.

Cases referred to:

(1) *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [1964] M.L.J. 463.

(2) *Chin Boon Keng* v. *Sri Jaya Transport Co. (P.T.M.) Ltd. & Anor.* [1965] 2 M.L.J. 239.

(3) *Fletcher* v. *Autocar and Transporters Ltd.* [1968] 1 All E.R. 726, 733.

FEDERAL COURT.

K. A. Menon for the appellant.

David Tay for the first respondent.

Second respondent absent and unrepresented.

Cur. Adv Vult.

Suffian F.J. (delivering the judgment of the court): This is an appeal by defendants against the quantum of damages awarded by Yong J. in favour of the plaintiff who suffered injuries in a road accident. The defendants want the quantum reduced.

The accident happened on the night of 29th August, 1965, at about 12.15 a.m. at Campbell Road, Kuala Lumpur. The plaintiff was then riding pillion on a motor-cycle driven by a friend when it collided with a taxi driven by the first defendant and owned by a company, the second defendant. The learned trial judge held the first defendant 2/3 and the plaintiff 1/3 to blame for the accident, and there is no appeal against this finding.

The plaintiff suffered two fractures: first, of his acetabulum with dislocation of the right hip joint and, secondly, of his right ankle. He was hospitalised from 29th August until 11th October, 1965, a period of nearly 1½ months, and after that he was treated as an outpatient for nearly two months. During these two periods he could not walk and had to use crutches.

On 21st February, 1967, a specialist at the Government General Hospital who examined him found that the flexion of his right hip was possible only up to 90° and that there was limitation in the rotation of his right hip joint. He also found that the plaintiff's right ankle joint showed chronic swelling and limitation of dorsi flexion. The specialist thought that these disabilities were likely to be permanent and that there was a strong possibility of the plaintiff developing osteo-arthritis of his right hip joint.

The plaintiff was 22 at the time of the accident. He was employed by the Local Defence Corps to load and unload, and also to do some clerical work. He had an English education, having passed Standard VI. Because of the accident he is not as efficient as he was

in doing heavy work, as he cannot walk as well as he could before the accident. He was a sportsman who played badminton and football for his school and for the Indian Rovers and enjoyed swimming and other amenities. Since the accident he can no longer enjoy these sports.

Counsel in their addresses in the lower court clearly distinguished the two injuries suffered by the plaintiff: namely, the fracture of the right ankle and the fracture of the hip.

For the fracture of the right ankle, Mr. Menon for the defendants submitted that $3,000 would be a fair award. Counsel for the plaintiff, Mr. Tay, agreed.

For the fracture of the hip joint, Mr. Menon submitted that $3,000 would be a fair award for that also, but Mr. Tay submitted that it should be more ($8,000), as apart from the fracture there was also dislocation and a strong possibility of osteo-arthritis.

In the event the learned trial judge awarded $9,000 general damages. He said that, taking into account the facts of the case and the principle that general damages should be in line with a discernible upward trend of damages in reasonably comparable cases, $3,000 would be a fair award for the fracture of the plaintiff's ankle bone, and $6,000 for the pain and suffering and loss of amenities for the fracture of the hip joint, his permanent disabilities and osteo-arthritis and the longer years of the plaintiff's suffering.

He also awarded the plaintiff $250 special damages.

The defendants appeal to us.

Their counsel, Mr. Menon, wants the damages reduced. He does not complain about the $3,000 awarded for the plaintiff's ankle fracture. But he says that the learned judge was wrong in assuming that there was a trend in the Malaysian courts to increase general damages. He says that even if such an upward trend exists the learned judge was wrong in applying the principle in this case. He says $6,000 for the hip injury was too much compared to awards in recent comparable cases. He says that the learned judge was wrong in itemising the two separate injuries and that he should have taken into consideration the element of overlapping in the case of two or more simultaneous injuries. Finally, he says as regards the special damages that the claims were vague in nature and incapable of strict proof and that they should not have been allowed in full.

As to Mr. Menon's first argument, with respect we agree with it. The learned judge thought that from *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.*[1] and *Chin Boon Keng* v. *Sri Jaya Transport Co. (P.T.M.) Ltd. and Anor.*[2] there was discernible a trend by the courts to increase awards, which trend was confirmed, he said, by an editorial note to an article in the 1971 May issue of *The Malayan Law Journal* at page li:

"As we go to press we are informed that in Kuala Lumpur Civil Suit No. 879/67 heard on May 17, Mr. Justice Raja Azlan Shah gave judgment in the sum of $5,500/- general damages plus 20%. The same argument was advanced before his Lordship as was advanced before the Singapore judges, and it would therefore appear that a figure of 20% to 30% increase in damages is becoming general in Singapore and in Malaysia."

It seems to us that the two cases relied on by the learned judge are authority for the proposition that an award should not be out of line with a discernible trend or pattern of awards in reasonably comparable cases rather than for the proposition that there is discernible a trend by the courts to increase awards. We have not been shown a copy of the judgment of Raja Azlan Shah J. referred to in *The Malayan Law Journal*, but even if the note accurately summarises its effect we are of the opinion that a single case cannot establish a trend.

The article in *The Malayan Law Journal* purports to show a trend on the part of the courts in Singapore to increase awards. The courts in Singapore may have shown that trend, but it is fairly well known that the cost of living in Singapore has gone up rather steeply in recent years. But that is not so in Malaysia.

With respect we do not think that the learned judge should have taken compensation for each of the two injuries suffered by the plaintiff separately and then just have added them up at the end. The items are not separate heads of compensation. They are only aids at arriving at a fair and reasonable compensation. See *Fletcher* v. *Autocar and Transporters Ltd.*[3] There is an element of overlapping when two or more injuries are suffered simultaneously.

As regards the quantum, we are of the opinion that the award of general damages in this case was so out of line with the trend in reasonably comparable cases that we have looked at, that it is competent for this court to interefere with it, and we would accordingly reduce the general damages from $9,000 to $6,000.

As regards special damages, the learned judge found them proved, and we do not think that this court should interfere with this award.

Quantum of damages reduced.

Solicitors: *K. A. Menon & Co.; Murphy & Dunbar.*